

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Application of:

Hemingway Huynh et al.

Application No.: 10/611,698

Filed: June 30, 2003

For: ADAPTIVE MEDIA MESSAGING,  
SUCH AS FOR RICH MEDIA  
MESSAGES INCORPORATING  
DIGITAL CONTENT

Examiner: Michael Young Won

Art Unit: 2155

Confirmation No.: 4440

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF

TO THE HONORABLE COMMISSIONER FOR PATENTS:

This reply brief is in response to Examiner's Answer mailed May 5, 2008 (hereinafter "Examiner's Answer"). Appellant respectfully requests consideration of this reply brief and allowance of the present patent application.

## **Remarks**

In section 12(a) of the Examiner's Answer, it is stated that logic for testing is interpreted as any application or code that determines capabilities of a client computing system. It is the Examiner's apparent position that an application, sent from a server to a client, which asks a user about the client's capabilities is "logic for testing digital content capabilities of the receiving computer system" as recited in claim 1. The Appellants traverse this position.

The above-quoted element of claim 1 would be understood by a person of ordinary skill in the art in light of the present specification as logic that initiates a series of tests (or tasks) that are performed by the receiving computer system. How the receiving computer system performs these tests (or tasks) will then be deterministic of the digital content capabilities of the receiving computer system. See, e.g., the discussion of testing found in paragraph [0027] of Appellant's specification. Bandwidth testing may be performed by measuring an amount of time it takes to download selected content. Tests that determine the type/versions of media players that are resident on the receiving computer system may be performed by reading the system's registry or other locations of persistent memory; attempting to instantiate an instance of a particular player; etc.

Sahai, on the other hand, acknowledges that the application sent to client **12** is incapable of testing the client **12** "because of the security features of JAVA which prevent "invasion" of or "snooping-in" the client **12**." Therefore, "the application sent by the server **10** to the client **12** is limited to asking (prompting) the user to supply the capability information of the client and asking the user...specific questions, such as 'What is the processor type of your machine?'". Sahai column 6, line 64 – column 7, line 3 (underlining added). The user, i.e., the person operating the client **12**, may then respond to whatever questions are presented by the application. This is clearly different than logic that tests the client **12**.

For these reasons, Sahai fails to teach or suggest transmitting, to a receiving computer device, logic for testing digital content capabilities of the device.

In section 12(b) of the Examiner's Answer, it is asserted that Sahai teaches a link that, when dereferenced, activates the testing logic. Even if this is accurate, which the Appellants dispute, this assertion only refers to a portion of the element recited and discussed in the quoted section of the Appeal Brief. In the quoted section, the Appellants pointed out that Sahai and Dunning, alone or in combination, fail to teach or suggest inclusion of the link in the media message that is displayed as a first layer of the adaptive media message. The Examiner has failed to adequately account for this portion of this element in the Examiner's Answer or any previous office actions. For at least this additional reason, this claim is patentable over the cited references.

The remainder of the Examiner's Answer is composed of statements repeated from the Final Office Action or statements that are otherwise sufficiently addressed in the Appellant's Appeal Brief.

## **CONCLUSION**

Appellant respectfully submits that all the appealed claims in this application are patentable and requests that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

We do not believe any fees are needed at this time. However, if it is determined that fees are necessary, please charge our Deposit Account No. 500393. In addition, please credit any overages to the same account.

SCHWABE, WILLIAMSON & WYATT, P.C.

Dated: 07/02/2008

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